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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF OREGON**

**UNITED STATES OF AMERICA**

**3:16-CR-00051-BR-01**

**v.**

**AMMON BUNDY,**

**Defendant.**

**GOVERNMENT'S RESPONSE TO  
DEFENDANT AMMON BUNDY'S  
MOTION TO MODIFY  
PROTECTIVE ORDER**

The United States of America, by Billy J. Williams, United States Attorney for the District of Oregon, and through Ethan D. Knight, Geoffrey A. Barrow, and Craig J. Gabriel, Assistant United States Attorneys, hereby responds to defendant Ammon Bundy's Memorandum in Opposition to Signed Protective Order and Motion to Modify (ECF No. 365). The government believes that the current Protective Order is appropriate and recommends that the Motion to Modify should be denied.

## **I. Argument**

Through extensive negotiations, the government and numerous defendants and defense counsel agreed to the existing Protective Order. Ammon Bundy alone opposes the current Protective Order. To date, none of the other defendants, defense counsel, or stand-by counsel has filed a motion with the Court that the current Protective Order has limited their investigation. Further, the current Protective Order states that “if there is specific discovery material that defense counsel believes should be an exception to this Protective Order, the parties shall confer before seeking guidance from this Court.” No defendant has yet approached the government seeking an exception to the Protective Order. Additionally, the current Protective Order contemplates that the parties will “confer regarding the efficacy of this Protective Order” and address outstanding issues at the status conference on June 15, 2016.

Defendant Ammon Bundy’s Proposed Protective Order would create a cumbersome process in which, for each and every discovery production, (1) the government would designate documents “confidential,” (2) the government would file a motion under seal with the Court, attaching the so-called confidential documents, (3) the Court would rule on whether the documents were, in fact, confidential, and (4) defendants could subsequently move the Court for a determination that the confidentiality designation be removed.

In a large-scale case such as this, with multiple and voluminous discovery productions, defendant Ammon Bundy’s proposal is impractical. The process proposed by defendant Ammon Bundy would slow down discovery production significantly and require the Court to review portions of each of the government’s discovery productions. By contrast, the current

Protective Order is based on good cause and is narrowly tailored to the specific circumstances in this case.

Finally, counsel for Ammon Bundy states that the Protective Order has hampered his ability to defend his client. Counsel refers to the need for “crowdsourcing” and the “assistance of a network of thousands of people.” As counsel is surely aware, Oregon Rule of Professional Conduct 5.3 addresses Responsibilities Regarding Nonlawyer Assistants. Specifically, Rule 5.3(a) provides: “With respect to a nonlawyer employed or retained, supervised or *directed* by a lawyer . . . a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person’s conduct is compatible with the professional obligations of the lawyer” (emphasis added).

While this case is complex, it is simply not credible that a defense lawyer would need to provide discovery to “large groups” of “research volunteers” to provide effective assistance of counsel to a defendant in this matter.

## **II. Conclusion**

The government respectfully recommends that defendant Ammon Bundy’s Motion to Modify the Protective Order be denied.

Respectfully submitted this 13th day of April 2016.

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s/ Craig J. Gabriel  
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